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May 18, 2000

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

CC Docket No. 96-98/96-262

Dear Ms. Salas:

This *ex parte* filing comes at the request of Federal Communications Commission (Commission) staff and in an effort to assist the Commission in its evaluation of the proposal submitted by several incumbent local exchange carriers (ILECs) in a February 28, 2000 *ex parte*. That proposal sought to identify circumstances under which requesting carriers may convert special access circuits to unbundled network elements (UNEs) because those circuits provide "a significant amount of local exchange service". The ILEC proposal, however, fails to identify a number of situations where circuits are in fact being used to provide exclusively or significantly local service. WorldCom submits suggested language that helps identify these additional situations where conversion of special access is appropriate while excluding situations where special access circuits fail to meet the temporary "significant local service" requirement. The attached document provides suggested language for both a rule and an order that builds on the options provided in the ILEC proposal while achieving the Commission's stated objectives of encouraging local competition and maintaining stability in the special access market until a final rule addressing these issues is adopted.

As the Commission knows, WorldCom continues to believe the best public policy for achieving maximum local competition – and complying with the legal requirements of the Telecommunications Act of 1996 – argue for no use restrictions on UNEs. However, in the event that the interim period during which certain restrictions will apply is extended, WorldCom seeks to make certain that there is a workable, practical and effective rule in place.

In a further effort to protect the status quo, WorldCom also believes that the Commission should have additional flexibility in reviewing incumbent local exchange carrier (ILEC) requests for pricing flexibility. We believe that extending the time during which the Commission can review these requests to correspond with the time during which an interim rule regarding restrictions on the use of EELs is in effect will help protect the status quo for incumbents and new entrants alike. We would not propose that the Commission be required to wait longer than the 90 days provided

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for under the pricing flexibility order. Rather, that the Commission be permitted greater flexibility to determine if providing pricing flexibility in a particular situation and geographic area is in the public interest while use restrictions are in place. In addition to discussions with FCC staff, WorldCom has also discussed these proposals with various segments of the industry in an effort to forge consensus on a workable rule.

In accordance with section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), an original and one copy of this memorandum are being filed with your office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley Shillman', with a stylized flourish at the end.

Bradley Shillman

Encl.

cc: Dorothy Attwood
Rebecca Beynon
Kyle Dixon
Jordan Goldstein
Sarah Whitesell
Larry Strickling
Carol Matthey
Jake Jennings

RULES LANGUAGE:

Option 4

Circuits purchased out of special access tariffs on which 100 percent of the activated channels are used to provide local exchange service may be converted to UNEs, and the converted circuits may remain connected to any existing access service circuits to which they had previously been connected without regard to the nature of the other traffic carried over the access service circuits, provided that:

a) The carrier agrees to continue to pay the full access service price for the access service circuits connected to the local circuits that have been converted to UNEs; and

b) Channel terminations that are converted to unbundled loops may not be combined with transport services under the terms set out in this option unless the circuit established thereby is used to provide exclusively local services.

Option 5

Carriers that have unsuccessfully sought to convert circuits purchased out of special access tariffs over which they provide "a significant amount of local exchange service," where the circuits do not satisfy any of the above four options, may file a request with the Common Carrier Bureau for a ruling that the circuits are "significantly local" and therefore are entitled to be converted to UNEs. The Bureau shall rule on such requests within 30 days of receipt of the request.

Price Adjustments

Carriers that are entitled to convert special access lines to UNEs pursuant to these provisions also are entitled to a refund from the ILECs for the difference in price between the special access service and the UNE from the time the conversion was first sought in accordance with the relevant interconnection agreement.

ORDER LANGUAGE:

Subject to the conditions set forth below, we conclude that circuits purchased out of special access tariffs on which 100 percent of the activated channels are used to provide local exchange service may be converted to UNEs, and these converted circuits may remain connected to any existing access service circuits to which they previously had been connected without regard to the nature of the other traffic carried over those access service circuits. To obtain this conversion, (1) a requesting carrier must continue to pay the full access service price for the access service circuits connected to the local circuits that have been converted to UNEs, and (2) any channel terminations that are converted to unbundled loops may not be combined with transport services, unless the circuit established thereby is used to provide exclusively local services.

Some carriers currently use tariffed ILEC special access services to provide to end user customers services other than the traditional special access services used by IXC's that are the subject of this temporary use restriction. Specifically, carriers use tariffed special access services to provide local exchange services. This temporary use restriction is not intended to prevent carriers from converting to UNEs these special access services that are combinations of loop and transport carrying local traffic. *See* UNE Remand Order (Third Report and Order) ¶¶ 480, 486 and Supplemental Order ¶¶ 2, 5.

Often these "local" special access service lines are multiplexed onto higher capacity transport circuits that carry combinations of local and access (and other) traffic. Certain carriers have informed the Commission that ILECs have refused to permit competing carriers to convert these purely local combinations of loop and transport to UNEs on the theory that they are under no obligation to allow UNEs to be combined with preexisting network services. The result of this practice is that carriers that wish to convert local circuits to UNEs must pay to have those circuits disconnected from the access services to which they are currently attached, and then must pay to have them reconnected to transport UNEs that can carry only local traffic. This will result in customers needlessly losing diastole, and will raise carriers costs to the point where they may not find it economical to convert the local circuits to unbundled network elements, especially in the context of our provisional rules. It also will lead to situations in which competing carriers that rely on leased transport would have to operate segregated local and access transport networks, while ILECs that have authority to provide access services to retail customers could manage their local and access traffic in a more efficient manner. For all of these reasons, this practice could raise the cost of local services to end users without preserving for ILECs any of the benefits this provisional rule was designed to protect.

Option 4 is designed to allow carriers to convert local lines to UNEs without having to go to the unnecessary expense of disconnecting those lines from the access services to which they are currently connected. Competing carriers offering local exchange services to end users should be able to convert to UNEs the switched access lines used to provide these services without the expense and discriminatory treatment this option would proscribe. Nor do we find it necessary for CLECs to have to measure traffic usage in order to be able to take advantage of this option. We conclude that if the circuit involved is connected to a carrier's Class 5 switch and is

configured to provide local exchange service, that is adequate assurance that the circuit is indeed local.

ILECs have asserted that an unlimited right to mix UNEs with services could allow requesting carriers to convert all channel terminations to unbundled loops, since there is no use restriction on unbundled loops. They also have asserted that an unlimited right to mix UNEs with services could upset the Commission's rules regarding the relationship between services and UNEs as they relate to Section 271 of the Telecommunications Act. *See* UNE Remand Order ¶¶ 468-473. We believe that Option 4 allays such concerns by allowing conversions under this option when the loop-transport service combination satisfies a use restriction, just as loop-transport UNE combinations in Options 1, 2, and 3 are subject to a use restriction.¹ Furthermore, this rule permitting carriers to leave existing circuits in place during this provisional period should not be understood to create any broader exception or rule concerning the more general question of the commingling of network elements and services as it relates to Section 271 of the Act, or otherwise. At the same time, although this Option concerns only lines that are 100 percent local, it does not preclude a carrier's argument under Option 5 that lines that carry significant — but not exclusively — local traffic should be entitled to analogous treatment.

Options 1 through 4 may not cover every situation in which a CLEC is using special access circuits to provide a significant amount of local exchange service to customers. In order to give carriers the opportunity to convert to UNEs in those situations, Option 5 allows carriers to file a request with the Common Carrier Bureau for a ruling that, for the situation covered in the request, the special access circuits are used by the carrier to provide a significant amount of local exchange service to the customer, and therefore the carrier is entitled to convert those circuits to UNEs. To minimize uncertainty in the marketplace, we require the Bureau to rule on such requests within 30 days of receipt of the request.

Carriers that are entitled to convert special access lines to UNEs pursuant to these provisions also are entitled to a refund from the ILECs for the difference in price between the special access service and the UNE from the time the conversion was first sought in accordance with the relevant interconnection agreement.

¹Of course carriers that are collocated at customer serving wire centers (such as data CLECs who must install advanced services equipment at the wire center) for that reason do not need to take advantage of the terms of Option 4, and so are not limited in any way by this restriction.